

Allen Owen, Mayor
Eunice Reiter, Mayor Pro Tem
Jerry Wyatt, Councilmember
Barbara Gibson, Councilmember



Buddy Jimerson, Councilmember
Brett Kolaja, Councilmember
Cynthia Gary, Councilmember
Caroline Kelley, City Attorney
Frank Simpson, City Manager
Patrice Fogarty, City Secretary

CITY COUNCIL MEETING MINUTES

City Council of the City of Missouri City, Texas, met in regular session **Monday, May 4, 2009**, at the City Hall Council Chambers, Second Floor, 1522 Texas Parkway, Missouri City, Texas, at **7:00 p.m.** to consider the following:

1. ROLL CALL

Mayor Owen called the meeting to order at 7:01 p.m.

Those also present: Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson; City Manager Simpson, City Attorney Kelley, and City Secretary Fogarty. Absent: Councilmember Kolaja.

2. PLEDGE OF ALLEGIANCE

The *Pledge of Allegiance* was led by the Missouri City Police Department Honor Guard.

3. PRESENTATIONS AND RECOGNITIONS

Mayor Owen proclaimed the month of May as “**Motorcycle Safety Awareness Month**,” the week of May 3 - May 9, 2009, as “**Building Safety Week**,” the week of May 4 - May 10, 2009, as “**Public Service Recognition Week**,” the week of May 10 – May 16, 2009, as “**National Police Week**” and May 15, 2009, as “**Peace Officers’ Memorial Day**,” the week of May 17-23, 2009, as “**National Public Works Week**,” in Missouri City, Texas. The winners of the **Earth Day poster contest**, sponsored by the **Quail Valley Garden Club** were recognized. **Councilmember Eunice Reiter**, who is not seeking re-election, was recognized for her **twenty years of service** to the **City of Missouri City**. She dedicates her commitment to the City of Missouri City to her husband, Karl Reiter, and daughter, Sheila, who helped her along the way. She stated when she came onboard City Council many years ago, she did not fully know the duties of a Councilmember. That is when Allen Robinson, a Councilmember at that time, took her under his wing, mentored her, and taught her how to be a Councilmember. She is so grateful to him for that, and grateful for being able to serve on City Council with the A Team. She commended the City Councilmembers she first served with, Joe Workman, Carl Bowles, Frank Yonish, Allen Robinson, Albert Glover, and Allen Owen, because, in her opinion, there has never been another Council as cohesive as that Council was. And, she highly praised our current Mayor, Allen Owen, and stated the City is fortunate to have him as the Mayor. She stated Mayor Owen is a superb negotiator having built lasting relationships that benefit the City every day. In addition, she said a special goodbye to City Staff, stating they make the job of governing so much easier. City Council and Staff members have changed the face of Missouri City over the past 15 years, and the result is good. She states much more is planned for the City, and she shall watch from the sidelines with great pride as the future happens. This will be her last City Council meeting, and she leaves bearing the marks of years well spent.

4. CONSENT AGENDA

- (a) Consider approving the **minutes** of the **special** and **regular** City Council meetings of **April 20, 2009**.

Mayor Pro Tem Reiter moved to approve the Consent Agenda pursuant to recommendations by Staff. Councilmember Gary seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

5. APPOINTMENTS

There were no Appointments at this time.

6. AUTHORIZATIONS BY COUNCIL

- (a) Consider authorizing the City Manager to execute an **engineering services agreement** for preliminary engineering services for the **Texas Parkway (FM 2234) and Cartwright Road (FM 3345) Corridor Improvements**.

Director of Public Works/City Engineer Elmer stated Staff has negotiated a proposal with AIA Engineers, LTD for an amount not to exceed \$129,448.25 that includes recommending necessary engineering improvements, preparing a conceptual design, construction costs estimate, and an implementation schedule for the recommended improvements related to roadways and traffic. A second component will be design, by subcontractor, Clark Condon, to provide landscape architectural services to design hardscape and landscaping components to be built in the first phase of the project. The project location will be from FM 2234 to US 90A to FM 3345 and FM 3345 from FM 2234 to Murphy Road (FM 1092) in Missouri City, Texas.

Mayor Pro Tem Reiter moved to authorize the City Manager to execute an **engineering services agreement** for preliminary engineering services for the **Texas Parkway (FM 2234) and Cartwright Road (FM 3345) Corridor Improvements**. Councilmember Gary seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (b) Consider authorizing the City Manager to submit a formal request to the **Texas Water Development Board** for the **release of escrow, waiver of the ten-year call provision, repayment of the \$1,215,000** City of Missouri City Combination Tax and Revenue Certificates of Obligation, Series 2003, and **cancellation** of the remaining **Clean Water State Revolving Fund loan commitment** in the amount of **\$14,900,000**.

First Assistant City Attorney Smith stated the City applied for a loan from the Clean Water State Revolving Fund through the Texas Water Development Board to finance the construction of the Vicksburg/Mustang Bayou Regional Wastewater Treatment Plant and the Lower Oyster Creek Wastewater Treatment Plant (Sienna). During its meeting on February 19, 2003, the Texas Water Development Board awarded the City a loan commitment in the amount of \$16,115,000.00 from the Clean Water State Revolving Fund to finance wastewater system improvements. The loan is funded through the Water Development Board purchasing certificates of obligation issued by the City. A portion of the loan in the amount of \$1,215,000.00 was funded through the City's issuance of its \$1,215,000.00 Combination Tax and Revenue Certificates of Obligation, Series 2003, dated March 15, 2003. The funding, less the issuance costs, was deposited in the Construction Fund. The remaining loan commitment in the amount of \$14,900,000.00 remains committed to the City but has not yet been funded.

Due to site conditions, the plan to construct the regional wastewater treatment plant was abandoned. The City also abandoned plans to construct the Sienna plant. The City desires to provide for the complete repayment of the certificates of obligation and cancel the remaining loan commitment. The principal on deposit and the accrued interest are sufficient to redeem the certificates. However, the terms of the original ordinance authorizing the certificates of obligation provide that the certificates may not be redeemed before June 15, 2014, except upon consent of the Texas Water Development Board.

To arrange for the redemption of the certificates and cancellation of the remainder of the loan commitment, it is necessary for the City to submit a formal request to the Texas Water Development Board for the closure of the escrow account and use of the escrow balance of \$915,215.00, plus all interest, to redeem the certificates upon waiver of the ten-year call provision and to cancel the remaining loan commitment of \$14,900,000.00.

Staff recommends authorizing the City Manager to submit a formal request to the Texas Water Development Board for the release of escrow, request the waiver of the ten-year call provision, repayment of the remaining balance of the \$1,215,000.00 City of Missouri City Combination Tax and Revenue Certificates of Obligation, Series 2003, and cancellation of the remaining Clean Water State Revolving Fund loan commitment in the amount of \$14,900,000.00.

Councilmember Jimerson moved to authorize the City Manager to submit a formal request to the **Texas Water Development Board** for the **release of escrow, waiver of the ten-year call provision, repayment of the \$1,215,000** City of Missouri City Combination Tax and Revenue Certificates of Obligation, Series 2003, and **cancellation** of the remaining **Clean Water State Revolving Fund loan commitment** in the amount of **\$14,900,000**. Councilmember Wyatt seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (c) Consider declaring **The Ainbinder Company** in **default** of the **Economic Development Grant Agreement** dated May 15, 2006 and **cancelling** the **Economic Development Grant Agreement**.

Michael Ainbinder, The Ainbinder Company, and Tom Sage, Vinson & Elkins LLP, Attorneys at Law, were present to discuss the cancellation of the Economic Development Grant Agreement.

Mr. Ainbinder stated he was unaware of the Missouri City Development Authority meeting scheduled for today at 5:45 p.m. First Assistant City Attorney Smith indicated the Missouri City Development Authority agenda, along with the Special and Regular City Council meeting agendas, were sent to Mr. Ainbinder via email.

Mayor Owen stated that since Mr. Ainbinder was not present to discuss The Ainbinder Company being in default of the Economic Development Grant Agreement, the Missouri City Development Authority board of directors took action.

Mr. Ainbinder stated the Economic Development grant agreement addresses the construction of roadway improvements along Fort Bend Toll Road and State Highway 6. Their property is located at the NW corner of the Fort Bend Toll Rd. and State Highway 6, and presently does not have access to either. He stated The Ainbinder Company has entered into an agreement with the Texas Department of Transportation, they have since given them an approval letter that allows them to connect to State Highway 6, but they have been negotiating, and continue to negotiate, with the Fort Bend Toll Road Authority and Fort Bend County. The agreement would allow them to construct a deceleration lane that runs virtually the entire length of the eastern boundary of their property in order to gain access to the toll road. They have been pursuing the negotiation of that agreement from the time they acquired the property in 2006, and continue to do so.

In their opinion, it has been a long process to get the agreement signed because, at first, they were under the impression Fort Bend Toll Road was handling this agreement but later discovered Fort Bend County was handling. They continue to negotiate the agreement and have been pursuing all necessary approvals to construct those infrastructure improvements for the last several years. With this being said, they do not understand why they are in default of this agreement. The Ainbinder Company believes that from the time they acquired this property, they have acted in good faith. The City of Missouri City and The Ainbinder Company entered into the Economic Development Grant Agreement and TIRZ Development Agreement to provide infrastructure for a piece of property. They have spent \$360,000.00 of their own money to realign Trammel Fresno Rd. to City of Missouri City's specifications. Mr. Ainbinder stated they have been pursuing retail tenants for the site without the success they, nor the City, would prefer to see. However, he believes this is a good real estate location. They are confident that as the current economic conditions allow, they will be successful in developing a first class project that benefits the City and the community.

Mayor Owen questioned if The Ainbinder Company has any possible tenants now. Mr. Ainbinder stated no. Mayor Owen suggested they sit down with the City Attorneys to discuss why this development agreement is in default because it has now reached a point to where it cannot be restored. City Manager Simpson stated City Staff has told them in writing and in person regarding the City's position.

Councilmember Wyatt stated that the action taken upon The Ainbinder Company and the Economic Development Grant Agreement does not affect any possible future agreements. However, it will be based on the time sensitive analysis of the financial operation. This being said, what is their real objection to coming back when they have a program in place in order to be reconsidered?

Mr. Ainbinder indicated they have valuable property rights and do not believe they have defaulted under the agreement. Councilmember Wyatt stated the developer has to put the value on the ground first before they can get reimbursement. Mayor Owen stated the City's long-term goal is to see the property developed, too. However, the City is not going to jeopardize the City's financial position to aid that development.

Councilmember Wyatt moved to declare **The Ainbinder Company** in default of the **Economic Development Grant Agreement** dated May 15, 2006, and **cancelling** the **Economic Development Grant Agreement**. Councilmember Gibson seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (d) Consider authorizing the Mayor to execute and the City Secretary to attest the **First Amendment** to the **Development Agreement** between the **Missouri City Development Authority** and **Perry Homes** dated **February 7, 2006**.

Councilmember Gibson moved to authorize the Mayor to execute and the City Secretary to attest the **First Amendment** to the **Development Agreement** between the **Missouri City Development Authority** and **Perry Homes** dated **February 7, 2006**. Councilmember Gary seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (e) Consider authorizing the Mayor to execute and the City Secretary to attest an **agreement** among the **Missouri City Development Authority**, the City of Missouri City and **Perry Homes** relating to **payment** of **Developer Advances** under the **First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B**.

Councilmember Gibson moved to authorize the Mayor to execute and the City Secretary to attest an **agreement** among the **Missouri City Development Authority**, the City of Missouri City and **Perry Homes** relating to **payment** of **Developer Advances** under the **First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B**. Councilmember Wyatt seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

7. PUBLIC COMMENTS

There were no Public Comments at this time.

8. PUBLIC HEARINGS

There were no Public Hearings at this time.

9. PUBLIC HEARINGS AND CONSIDERATION OF ZONING ORDINANCES

- (a) Public hearing to receive comments for or against a request by **Brendan McEntee of McEntee Engineering and Design, Inc.**, to **amend Ordinance O-08-20** pertaining to PD, Planned Development District #70 to **add an approximate 1.54 acre tract of land** into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts; providing for severability; and to **consider the ordinance on the second and final reading**. The 1.54 acre tract of land is located northeast of the intersection of State Highway 6 and Murphy Rd., west of the new Lowe's building.

The public hearing opened at 7:57 p.m. Brendan McEntee, McEntee Engineering and Design, Inc., responded and stated Lowe's scheduled opening date is June 26, 2009. With no further comments, the public hearing closed at 7:58 p.m.

Councilmember Gary moved to approve the request by **Brendan McEntee of McEntee Engineering and Design, Inc.**, to **amend Ordinance O-08-20** pertaining to PD, Planned Development District #70 to **add an approximate 1.54 acre tract of land** into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts on the **second and final reading**. Councilmember Jimerson seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (b) Public hearing to receive comments for or against a request by the **Lighthouse Indian Baptist Church** for a **SUP, Specific Use Permit** to locate a church on an approximately 1.527 acre tract of land, currently zoned LC-3, Retail District; providing for severability; and to **consider the ordinance on the first of two readings**. The subject site is located on the northwest corner of Independence Blvd (formerly Lexington Blvd) and Fifth Street, southwest of Armstrong Elementary School.

The public hearing opened at 7:58 p.m. Planner Thomas stated The Lighthouse Indian Baptist Church is requesting an SUP, Specific Use Permit, to locate a church on an approximate 1.527 acre tract of land, currently zoned LC-3, Retail District. The subject site is located on the northwest corner of Independence Blvd (formerly Lexington Blvd) and Fifth Street, southwest of Armstrong Elementary School.

The Church currently holds services in Pearland, TX; however, these services would be relocated to Missouri City if the proposed facility is approved and completed. The Church has indicated the possibility of providing child care services in addition to the auxiliary ministries of the church. The applicant is seeking the following deviations: Section 7.12 - Height and Area Regulations: To allow for a ten foot (10') rear yard setback; and Section 12.2 - Standards for off-street parking: To provide a total of 85 parking spaces. The City's Planning and Zoning Commission and City Staff recommend approval for the church and associated child care center.

Councilmember Jimerson stated the sketch provided to them does not show the applicants own land up to Independence Blvd. Planner Thomas indicated there is a right of way, some of which the City owns. Councilmember Jimerson asked to confirm that the City owns the right of way. Planner Thomas responded, yes. Mayor Owen questioned if the City would give the applicants access to the right of way. Planner Thomas stated they would be required to submit a TIA, traffic impact analysis, as they get further along with their plans.

Mayor Owen further questioned if the church would meet the distance requirements from the traffic signal. Director of Public Works/City Engineer Elmer stated they should be at least 100 feet from that intersection, but the City's Public Works Department would look into that. Councilmember Jimerson inquired if the applicants would maintain the strip, or if the City has to keep it up. Director of Public Works/City Engineer Elmer stated the City has a mowing schedule; but in some cases, as the adjacent property owner uses it, they maintain the right of way strip more frequently.

Mayor Owen asked if the applicants would be required to install a sidewalk. Director of Public Works/City Engineer Elmer responded yes. Planner Thomas further explained that if it were a City owned and maintained right of way, the applicants would have to install a sidewalk.

City Manager Simpson questioned if the proposed childcare services would meet the City standards. The applicant and Pastor of the church, Thomas George, stated that at this point, they are concerned with the building of the church on the property. If they were to decide on stalling a childcare facility, they will follow the City's guidelines.

Councilmember Wyatt questioned if the childcare facility would be licensed. Mr. George stated that if they were to decide to install a childcare facility, they would get a license; but at this point, they are not pursuing that. Planner Thomas stated Council could decide to approve the church use SUP now; and later if a childcare facility were to be installed, consider approving the childcare SUP at that time.

Councilmember Wyatt stated he would prefer to remain consistent and questioned if the childcare facility would be considered as part of the regular church ministry. Planner Thomas responded yes. Furthermore, all the childcare regulations would apply, and the applicants would have to abide by all the site plans and safety issues before the City could be issue a Certificate of Occupancy for that business.

Discussion ensued. With no further comments, the public hearing closed at 8:17 p.m.

Councilmember Gibson moved to approve the request by **Lighthouse Indian Baptist Church** for an **SUP, Specific Use Permit**, to locate a church on an approximately 1.527 acre tract of land, currently zoned LC-3, Retail District on the **first of two readings**. Councilmember Gary seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

- (c) Public hearing to receive comments for or against a request by **Steve Meier** on behalf of the **Highway 6 #2 J.V.**, a **Texas Joint Venture** to **rezone** an approximately 2.001 acre tract of land from LC-2, Local Retail to LC-3, Retail Commercial; providing for severability; and to **consider the ordinance on the first of two readings**. The subject site is located southeast of the intersection of State Highway 6 and Vicksburg Boulevard, west of the Fort Bend Town Center, and east of the Oakwick Forest Estates Residential Subdivision.

The public hearing opened at 8:17 p.m. Planner Huff stated this is the first reading for a request by Steve Meier of Mays & Company, on behalf of HW 6 #2 J.V., to rezone approximately 2.001 acres of land from LC-2, Local Retail District to LC-3, Retail Commercial.

The subject site is located southeast of the intersection of State Highway 6 and Vicksburg Boulevard, west of the Fort Bend Town Center, and east of the Oakwick Forest Estates Residential Subdivision. With no further comments, the public hearing closed at 8:18 p.m.

Councilmember Gary moved to approve the request by **Steve Meier** on behalf of the **Highway 6 #2 J.V.**, a **Texas Joint Venture** to **rezone** an approximately 2.001 acre tract of land from LC-2, Local Retail to LC-3, Retail Commercial; providing for severability; and to **consider the ordinance on the first of two readings**. Councilmember Gibson seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes: None
Absent: Councilmember Kolaja

10. CONSIDERATION OF ORDINANCES

- (a) Consider an ordinance of the City of Missouri City, Texas, **amending Chapter 2, Administration**, of the Code of Ordinances of the City of Missouri City, Texas; providing rules for the **order of business of City Council meetings** and for the **tagging** of certain items at City Council meetings; providing for severability; and to consider the ordinance on the first of two readings.

Councilmember Wyatt moved to **amend Chapter 2, Administration**, of the Code of Ordinances of the City of Missouri City, Texas; providing rules for the **order of business of City Council meetings** and for the **tagging** of certain items at City Council meetings on the first of two readings. Councilmember Gary seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes: None
Absent: Councilmember Kolaja

11. CONSIDERATION OF RESOLUTIONS

- (a) Consider a resolution authorizing the **publication** of the **notice of intention** to issue City of Missouri City, **Texas Certificates of Obligation** in a principal amount not to exceed \$5,850,000 for construction of public works and the purchase of certain materials, supplies, equipment and machinery for authorized needs and purposes and for payment of contractual obligations for professional services; authorizing distribution of a Preliminary Official Statement relating to such Certificates; and containing other provisions relating thereto.

Councilmember Wyatt moved to authorize the **publication** of the **notice of intention** to issue City of Missouri City, Texas, **Certificates of Obligation** in a principal amount not to exceed \$5,850,000 for construction of public works and the purchase of certain materials, supplies, equipment and machinery for authorized needs and purposes and for payment of contractual obligations for professional services; authorizing distribution of a Preliminary Official Statement relating to such Certificates; and containing other provisions relating thereto. Councilmember Gibson seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes: None
Absent: Councilmember Kolaja

- (b) Consider a resolution of the City of Missouri City, Texas, approving the **creation** of the **Missouri City Parks and Recreation Local Government Corporation**; approving the application to the City for incorporation thereof; approving the articles of incorporation and bylaws thereof; confirming the appointment of the initial directors and chairperson; and containing findings and other provisions relating to the subject.

Councilmember Wyatt stated he would like Staff to reconsider the name of the Local Government Corporation. He would recommend, Missouri City Parks and Recreation Leisure Local Government Corporation.

Mayor Pro Tem Reiter moved to approve the **creation** of the **Local Government Corporation**; approving the application to the City for incorporation thereof; approving the articles of incorporation and bylaws thereof; confirming the appointment of the initial directors and chairperson; and containing findings and other provisions relating to the subject. Councilmember Gary seconded. **MOTION PASSED.**

Ayes:	Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, and Gibson
Noes:	None
Absent:	Councilmember Kolaja

12. RECEIVING OF REPORTS

Fire Chief Sander provided an update regarding H1N1 flu.

13. ADJOURN

The meeting adjourned at 8:30 p.m.

Patrice Fogarty, City Secretary